

No. 81374-4

CHAMBERS, J. (concurring) — I agree with the majority that when a court continues a trial beyond the speedy trial time requirements of CrR 3.3, it must document the availability of pro tempore judges and unoccupied courtrooms. However, the heart of the question before us is the meaning of “[u]navoidable or unforeseen circumstances affecting the time for trial beyond the control of the court or of the parties.” CrR 3.3(e)(8). In my view, the purpose of excluding periods of “unavoidable and unforeseen circumstances” in computing the speedy trial deadline is to allow the court flexibility to deal with *truly* exceptional circumstances. Here, however, the reason for the delay was not unforeseen, unavoidable, or in any way exceptional. Rather, delay occurred over objection from the defendant because one judge was presiding over a separate trial and the other judge was on vacation. A judge presiding over another trial is doing precisely what a judge is supposed to do. While the duration of a trial may be unforeseen and beyond the control of the parties, the fact that a case scheduled for trial actually commences is not. It is absurd to claim that such an event is either unavoidable or unforeseeable. Similarly, while judges are surely deserving of vacations, when they occur is rarely a surprise. While CrR 3.3 allows some “flexibility in avoiding the

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harsh remedy of dismissal with prejudice,” *State v. Flinn*, 154 Wn.2d 193, 199 n.1, 110 P.3d 748 (2005), allowing continuances beyond the 60 day limit based on another trial or a judge’s vacation would render the speedy trial rule virtually meaningless.

I respectfully concur.

AUTHOR:

Justice Tom Chambers

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WE CONCUR:

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